IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.419 OF 2007.

Geetabai Dagdulal Bhomavat. ... Appellant.
Versus.
Bhiran Mumbai Mahanagar Palika
and others. ... Respondents.

Shri D.V.Merchant, Senior Counsel i/by M/s.Mayur Narendra & Co.for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 6th June, 2007.

P.C.:

1. The Appellant/Plaintiff claims to be a resident of the first floor premises in the suit building. The 2nd Respondent is admittedly the owner of the building who is carrying out repairs to the building. A Notice of Motion was taken out by the Appellant. The prayer in the said Notice of Motion is for a mandatory injunction directing the 1st Respondent-Municipal Corporation to ensure that the 2nd Respondent does not carry out any work of repairs. The second prayer is for mandatory injunction directing the 1st Respondent to prosecute the 2nd Respondent. The third prayer is for mandatory injunction directing the 1st Respondent to disclose on an affidavit the nature and extent of work carried out to the suit building. The 4th prayer is for mandatory injunction directing the Appellant to complete the work required for restoration of the suit building in the event of the 2nd Respondent not carrying out the said

work. Prayer (e) is for appointment of the Court Commissioner.

2. After having heard the learned Senior Counsel appearing for the Appellant, I find that no case for interference is made out. By the discretionary order passed by the trial Court, the Notice of Motion claiming the aforesaid reliefs has been dismissed. The 2nd Respondent is admittedly the owner of the suit property who is carrying out the repairs. The learned trial Judge was justified in not granting relief of mandatory injunction by way of interim relief. So far as the prayer for appointment of Commissioner is concerned, when the 2nd Respondent is carrying out the work under the permission granted by the 1st Respondent, there was no occasion to appoint a Commissioner for visiting the suit building and to report about the extent of repair work carried out and the nature of the repair work carried out. No case for interference is made out. The Appeal is dismissed. Hearing of the suit is expedited.

Judge.